



June 17, 2008  
(Sent Via Facsimile & U S Mail)

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Federal Election Commission  
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Re MUR 6011  
FEC v Darrell W. Glasper, et al

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COUNSEL  
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Dear Mr Jordan,

I am in receipt of your letter dated May 19, 2008, to which you attached a Formal Complaint Against Darrel Glasper, et al I have previously enrolled as counsel in this matter, and I appreciate your office's courtesy in allowing me additional time through today in which to file my response I trust this missive will adequately explain the facts and circumstances surrounding my client's legitimate (and legal) political endeavors

**I General Background**

The Louisiana Democratic Party, through Kenneth H Hooks, III, Esq., filed a complaint relative to Mr Glasper's personal use of a telephone bank in advocating his views regarding the Democratic Party and its choice for a candidate in a recent Louisiana Congressional special election

Mr Glasper is himself an African American Democrat, and he supported a African American Democratic candidate in the primary election, Mr. Michael Jackson Mr. Jackson was in the Democratic primary with one Don Cazayoux (a white Democrat), and Mr Jackson lost Michael Jackson was thus prevented from running in the general election Mr Glasper believes the Democratic Party intentionally deprived Mr Jackson of a fair chance in the primary election (because of his race), and, as a result, he chose to share his views with a number of voters prior to the general election

In the days prior to the general election, Mr Glasper personally contracted with a telephone bank to place a number of telephone calls to potential voters in the upcoming election The automated phone calls simply advised recipients that certain supporters of Mr Michael Jackson (e g , friends of Michael Jackson) planned to teach the Democratic Party a lesson by not voting for the white Democratic candidate in the general election (e g , Don Cazayoux)

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At a certain point thereafter, the Chairman of the Louisiana State Democratic Party (Mr. Christopher L. Whittington, Esq.) filed a Petition for Temporary Restraining Order in the Louisiana Nineteenth Judicial District Court. Prior to the TRO being granted, Mr. Gasper had already ceased the offending (but perfectly legal) telephonic communications. Mr. Don Cazayoux subsequently won the general election.

The entirety of all funds used in this endeavor came from Mr. Gasper himself. Further, the total expenditures for this endeavor amounted to less than one thousand dollars (\$1,000.00) for purposes of the federal reporting requirement guidelines.

## II. Legal Analysis

### A. Permitted/Prohibited Communications

The first area of inquiry involves whether the telephone calls which Mr. Gasper placed were prohibited communications. For purposes of this matter, 11 CFR 100.29(o)(1) defines "electioneering communication" as specifically excluding "telephone communications." Thus, there is no implicit violation of any applicable federal election law in the act of simply making the telephone calls. A telephone bank that supports or opposes a Federal candidate would be regulated as an additional form of federal election activity (e.g., it would come within the purview of the FEC). See 2 USCS § 431(20)(A)(iii), 11 CFR 100.24(b)(3). However, the unique status of Mr. Gasper's matter makes it likely not susceptible of direct regulation (though potentially subject to reporting requirements discussed *infra*).

### B. Reporting/Disclosure Requirements

The reporting requirements form the second basis of analysis herein. Notably, the expenditure at issue is clearly an "Independent Expenditure" as that term is defined by statute:

(17) Independent expenditure. The term "independent expenditure" means an expenditure by a person—

(A) expressly advocating the election or defeat of a clearly identified candidate, and

(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

2 USCS § 431(17). Where Mr. Gasper worked without the request or suggestion of any political candidate (see Exhibit "A"), his telephone calls would clearly constitute an independent expenditure.

Next, there are essentially three types of required reporting / disclosure which must be considered. The first is with respect to receipt of "a contribution in excess of \$200.00" by a person "who makes independent expenditures in an aggregate amount or value in excess of \$250.00 during a calendar year." See 2 USCS § 434(c). The second is with respect to "expenditures aggregating \$1,000.00" made "after the 20th day, but more than 24 hours, before the date of an election." 2

USCS § 434(g)(1) The third is with respect to "expenditures aggregating \$10,000.00" made "at any time up to and including the 20th day before the date of an election." 2 USCS § 434(g)(2) As applied, these three reporting requirements would not subvert any portion of Mr Gasper's telephone call operation

First, although Mr Gasper had more than \$250.00 in independent expenditures, he did not receive any contributions from any person or entity See Exhibit "A" Thus, the disclosure provision of 2 USCS § 434(e) would not apply Second, Mr Gasper's total expenditure on this telephone call operation was less than \$1,000.00 See Exhibit "A" Thus, the disclosure provisions of 2 USCS § 434(g)(1) would not apply Third, Mr Gasper's expenditures were less than \$1,000.00 and, obviously, less than \$10,000.00 See Exhibit "A" Thus, the disclosure provisions of 2 USCS § 434(g)(2) would not apply

### C. Additional Considerations

#### 1. Right to Use Candidate's Name

As the Supreme Court held in Buckley v. Valeo, 424 U.S. 1, 43, 96 S.Ct. 612, 646, 46 L.Ed.2d 659, 701 (U.S. 1976), advocacy "of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of public policy generally or the passage or defeat of legislation" This fundamental First Amendment right to advocate the defeat of election of a candidate necessarily carries with it a right to use a candidate's name If courts were to allow a political candidate to obtain civil damages from, or injunctive relief against, those who use his name without authorization, the right to advocate the defeat or election of particular candidates would lack efficiency. By permitting a candidate to regulate the use of his name in a political campaign, such remedies would stifle the "uninhibited, robust, and wide-open" debate on public issues that the First Amendment was designed to promote See New York Times v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964) Quoted in Friends of Phil Gramm v. Americans for Phil Gramm in '84, 587 F.Supp. 769, 774 (E.D. Va. 1984) Thus, there is no *per se* violation for Mr. Gasper's decision to use the name of a former or current candidate in his telephonic communications

#### 2. First Amendment Arguments

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people" Roth v. United States, 354 U.S. 476, 484, 1 L.Ed.2d 1498, 77 S.Ct. 1304 (1957) Although First Amendment protections are not confined to "the exposition of ideas," Winters v. New York, 333 U.S. 507, 510, 92 L.Ed. 840, 68 S.Ct. 665 (1948), "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course including discussions of candidates" Mills v. Alabama, 384 U.S. 214, 218, 16 L.Ed.2d 484, 86 S.Ct. 1434 (1966) This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," New York Times Co. v. Sullivan, 376 U.S. 254, 270, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964)

In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v. Roy, 401 U.S. 265, 272, 28 L. Ed. 2d 35, 91 S. Ct. 621 (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." Buckley v. Valeo, 424 U.S. 1, 14-15, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976) (per curiam). All foregoing quoted in McIntyre v. Ohio Elections Comm'n., 514 U.S. 334, 347 (U.S. 1995).

Thus, it follows where Mr. Glasper sought to effect Constitutionally-protected free speech through these telephone calls, he should be afforded the broadest protection possible. The applicable statutes, as written, would afford this protection to him.

### III. Conclusion

Mr. Darrell Glasper is a private citizen who chose to engage in the political process. He was not a candidate for election, and he was not acting for or on behalf of any candidate. Mr. Glasper simply wanted to apprise other voters of his own political views, and he chose to employ a telephone bank in this endeavor.

Mr. Glasper operated independently, not as a corporation, and he used only his own funds for these telephone calls. Any monies spent were completely "independent expenditures," and Mr. Glasper's total amount spent was less than \$1,000.00. As such, there are no reporting requirements which are applicable, and there is no prohibition in place against such activity. Thus, the Formal Complaint filed by the Democratic Party, through Kenneth H. Hooks, III, Esq., is without merit and should be summarily dismissed.

If you should have any questions concerning this Response, or if you should need to speak with me for any reason, please feel free to contact my offices at the number listed below.

With kindest professional regards I remain,

Very Truly Yours,

J. Christopher Alexander, Sr., LLC  
Attorneys and Counselors at Law

  
J. Christopher Alexander, Sr., Esq.  
JCA:cd

Enclosure Affidavit of Darrel W. Glasper

cc Darrel W. Glasper (via U.S. Mail w/ enclosure)